

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Price Cap Performance Review)
for Local Exchange Carriers;)
Treatment of Video Dialtone Services)
Under Price Cap Regulation)

CC Docket No. 94-1

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

PETITION FOR RECONSIDERATION

Cox Enterprises, Inc., by its attorneys and pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. 1.429, hereby submits its petition for reconsideration of the *Second Report and Order* in the above-referenced matter. ^{1/}

I. INTRODUCTION

In the *Second Report and Order*, the Commission required LECs with more than *de minimis* video dialtone costs to create a separate video dialtone price cap basket. Although the Commission's creation of a separate video dialtone price cap basket is an important step in preventing cross-subsidization of LEC video dialtone networks, absent further rule changes it is inadequate to accomplish this goal.

As Cox explained in its recent comments in this proceeding, the Commission has yet to prescribe a methodology for allocating common costs that prevents video costs

^{1/} *Price Cap Performance Review for Local Exchange Carriers; Treatment of Video Dialtone Services Under Price Cap Regulation, Second Report and Order and Third Further Notice of Proposed Rulemaking, CC Docket No. 94-1, FCC 95-394 (rel. September 21, 1995) ("Second Report and Order").*

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from being allocated to telephone services.^{2/} The allocation of common costs is a critical policy issue in the regulation of video dialtone and it should have been addressed in the *Second Report and Order*. The Commission's failure to address this issue limits substantially the value of a separate video dialtone price cap basket.

Furthermore, there is absolutely no justification for the proposal to permit cross-subsidization as long as it is *de minimis*. Having recognized that a separate price cap basket is necessary to minimize cross-subsidization, providing an exception to the separate basket requirement is tantamount to endorsing LEC cross-subsidization. Because the Commission readily can identify the costs incurred by a LEC for video dialtone from required reports,^{3/} there is no sound reason not to require these costs to be separated from telephone costs.^{4/}

II. A SEPARATE VIDEO DIALTONE PRICE CAP BASKET IS INSUFFICIENT TO PREVENT CROSS-SUBSIDIZATION ABSENT FURTHER CHANGES IN THE COMMISSION'S ACCOUNTING REGIME.

A separate price cap basket for video dialtone will be effective in preventing cross-subsidization only if the proper costs are assigned to the basket. Because of the

^{2/} Comments of Comcast Cable Communications and Cox Enterprises, Inc. (filed October 27, 1995).

^{3/} *Reporting Requirements on Video Dialtone Costs and Jurisdictional Separations for Local Exchange Carriers Offering Video Dialtone Services*, Memorandum Opinion and Order, DA 95-2036 (rel. September 29, 1995) ("*Reporting Order*").

^{4/} The Commission also must confirm, as requested by Cox in its initial comments, that costs attributable to Title VI services, are not included in price cap baskets and must be separated from telephone costs pursuant to Part 64 rules.

integrated nature of video dialtone facilities, the allocation of costs between video and telephone services is critical to the success of the video dialtone price cap basket.

Unfortunately, while the Commission has initiated a further notice on the question of what to include in the basket, it did not adopt suggestions by Cox and others that it prescribe a methodology for allocating common costs.^{5/} Rather, the Commission stated:

We decline to address these issues regarding modification of Parts 64 and 69 of our rules except insofar as they pertain to our request for comments on the allocation of costs to the video dialtone basket.^{6/}

Consequently, the *Second Report and Order* leaves the allocation of costs between video and telephone services entirely to the discretion of the carrier. Not surprisingly, LECs have used methodologies that assign a minimal amount of costs to video dialtone.^{7/} This is problematic because video and telephone costs flow through the accounting process unseparated, with the result that as much as 75 percent of network rebuild costs are allocated to the intrastate jurisdiction pursuant to Part 36 rules. 47 C.F.R. §

^{5/} See, e.g., Reply Comments of the General Services Administration at 10-13 (advocating separation of video and telephone costs pursuant to Part 64 rules).

^{6/} *Second Report and Order* at ¶ 38.

^{7/} Bell Atlantic, for example, has proposed allocating only 28 percent (based on the percentage of non-shared investment attributable to video) of its network rebuild costs for Dover to video dialtone. *Bell Atlantic Telephone Cos. (Revisions to Tariff F.C.C. No. 10, Order Designating Issues for Investigation, CC Docket No. 95-145, DA 95-1928 at ¶ 21* (rel. September 8, 1995). U S West proposed an even smaller portion of common costs (based on 50 percent of actual penetration) to its video dialtone trial in Omaha. *U S West Communications (Revisions to Tariff F.C.C. No. 5), Order, DA 95-1892 at ¶ 4* (rel. August 30, 1995).

36.154(c). The Commission's failure to address this issue places a substantial burden on state regulators and increases the risk of cross-subsidy by the LECs.

To avoid this result, the Commission should have amended its Part 64 cost allocation rules to include procedures for separating video costs from telephone costs. As Cox proposed earlier in this proceeding, LECs should be required to assign at least 50 percent of network rebuild costs to video dialtone and no more than 50 percent to regulated telephone services, with the video and telephone portions then subjected to jurisdictional separations under Part 36 rules.^{8/} Under this proposal, the Commission can ensure that video dialtone costs do not get assigned to the intrastate jurisdiction and can avoid requiring each state commission to undertake a separate analysis of the appropriateness of LEC costs.

Because the Commission did not amend its Part 64 rules in the *Second Report and Order*, it should have prescribed some other method for separating video and telephone costs pursuant to Part 36. Under the existing Part 36 rules, LECs presumably have been allocating network rebuild costs between Category 1 (exchange line) and Category 2 (wideband), neither of which was intended to include the type of broadband facilities necessary to provide video dialtone. Section 36.153(a)(1) requires allocation between C&WF categories based on "conductor cross section." 47 C.F.R. § 36.153(a)(1). Arguably this requires an allocation based on bandwidth. The Commission, however, has yet to specify

^{8/} See Letter from Laura H. Phillips, Esq. to William F. Caton, CC Docket 87-266 (July 12, 1995).

how this provision should be applied in the context of video dialtone and only recently did it even require carriers to explain how they intend to apply the rule.^{9/}

This failure to prescribe procedures for allocating costs between Category 1 and Category 2 has left this decision entirely to the discretion of individual LECs, who have a tremendous incentive to allocate C&WF costs to Category 1 because 75 percent of those costs are assigned to the intrastate jurisdiction. 47 C.F.R. § 36.154(c). Cox's proposed amendments to Part 64 would minimize this concern, but the Commission did not adopt these proposed changes to the Part 64 rules. Consequently, at a minimum, the Commission should have prescribed how costs are allocated between Category 1 and Category 2 cable and wire facilities as part of the *Second Report and Order* to limit the potential for misallocation of costs.

III. THE COMMISSION SHOULD NOT PERMIT EVEN A *DE MINIMIS* AMOUNT OF CROSS-SUBSIDIZATION.

In the *Second Report and Order*, the Commission required LECs to assign costs to the newly created video dialtone basket only if the costs exceed a *de minimis* level. In other words, if the level of cross-subsidization is "small", the Commission will turn a blind eye. This policy, which was not even proposed in the Commission's Notice of Proposed Rulemaking,^{10/} is totally unjustified and should be eliminated.

^{9/} *Reporting Order* at ¶ 20.

^{10/} *Price Cap Performance Review for Local Exchange Carriers; Treatment of Video Dialtone Services Under Price Cap Regulation*, CC Docket No. 94-1, Further Notice of Proposed Rulemaking, 10 FCC Rcd 3141 (1995).

As an initial matter, any characterization of LEC video dialtone investment as *de minimis* is misleading. Even if a LEC's video dialtone costs are small in proportion to its regionwide or statewide telephony costs and the effect of cross-subsidization on individual telephone ratepayers is minimal, the effect on the local cable operator forced to compete with a subsidized video dialtone facility would be substantial. For example, relative to its total telephone costs, the costs incurred by Bell Atlantic for its Dover, New Jersey facility may satisfy a *de minimis* standard, but the cross-subsidization that will result without a separate price cap basket could have a significant effect on the development of video and telephone competition in Dover.

The Commission's proposal to tolerate a supposedly minimal amount of cross-subsidization is without precedent. Under the Commission's Part 64 rules, all of a LEC's investment in enhanced services or other nonregulated services is separated from telephone costs, even when the investment associated with these services is much less than what has been proposed for video dialtone. There is no reason not to apply a similar standard to video dialtone investments.

Not only is the *de minimis* policy unprecedented, it is not justified by increased administrative efficiency. LECs already are required to account for and report video dialtone costs on the ARMIS 43-09 report.^{11/} Therefore, reporting these costs as a separate video dialtone basket on the ARMIS 43-01 report will not be a burdensome task. If the *de minimis* policy is retained, however, there will be an additional burden that results from monitoring

^{11/} *Reporting Order* at ¶ 13.

when a LEC's costs rise above the *de minimis* level. Accordingly, the Commission's *de minimis* exception to the separate price cap basket requirement is totally unjustified and should be eliminated.

IV. CONCLUSION

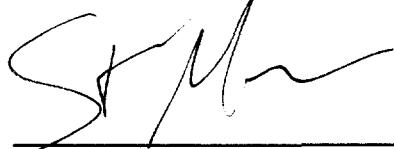
The creation of a video dialtone price cap basket is one of a number of steps necessary to separate video dialtone and telephone costs. However, in the *Second Report and Order* the Commission failed to take the critical step in this process by not prescribing a method for allocating common costs between video and telephone services before the Part 36 jurisdictional separations process. The LECs simply cannot be allowed to control this process. The Commission has not fulfilled its responsibilities under the Act until it takes these actions.

Furthermore, there is no sound reason to permit cross-subsidization merely because it is *de minimis*. A *de minimis* exception ignores the effect of cross-subsidization on competing cable operators and results in additional administrative burdens. This policy is

totally unprecedented and not justified on the record in this proceeding. Accordingly, the Commission should eliminate the *de minimis* exception.

Respectfully submitted,

COX ENTERPRISES, INC.

A handwritten signature in black ink, appearing to be 'L. Kennedy', written over a horizontal line.

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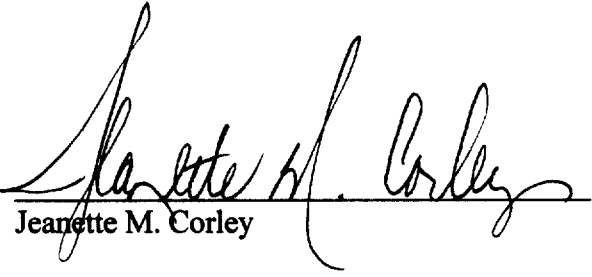
CERTIFICATE OF SERVICE

I, Jeanette Corley hereby certify that on this 6th day of November, 1995 a copy of the attached Petition for Reconsideration was sent via first class mail, postage prepaid or by hand-delivery to the following:

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